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Federal Communications Commission
Office of the Secretary

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May 26, 1992

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GENERAL COUNSEL

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FCC MAIL BRANCH

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D. C. 20554

Re: Comments to Proposed Implementing Regulations for the
Telephone Consumer Protection Act of 1991 (the TCPA);
Docket No. 92-90

Gentlemen:

Baltimore Gas and Electric Company (BG&E) is an investor-owned utility providing gas and electric service to the central Maryland area. As an adjunct to its utility business, BG&E operates several retail merchandise stores that sell gas and electric appliances. BG&E provides financing for such sales. In addition, BG&E encourages energy conservation under its Conserve 2000 programs which provide rebates and financing to residential and commercial customers who install various energy-efficient devices. As a result of BG&E providing utility service and financing for commercial and consumer transactions, several activities of BG&E will be impacted by the FCC's proposed regulations implementing the TCPA. For that reason, on behalf of BG&E I respectfully submit the following comments to the FCC's proposal. In accordance with the proposal, please find an original and nine copies of our comments so that each Commissioner can receive a personal copy.

Background

BG&E is committed to purchase a predictive dialing system in the near future to aid its communications with customers in several respects. As a utility, there is a need to inform customers of impending or current power outages (and also when those outages are over), to notify customers of emergency situations such as gas leaks, to provide low-income customers with information on assistance with heating bills, to schedule appointments for meter readings and to promote BG&E's Conserve 2000 programs. In addition, because BG&E offers both consumer and commercial financing, it will use the predictive dialer to aid in collection efforts. Finally, BG&E anticipates using the predictive dialer to contact customers in regard to soliciting sales of goods from its merchandise stores, to do market research for its stores and to make follow-up calls to check on customer

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satisfaction. In the above situations, either a prerecorded voice or a BG&E employee would speak to the customer once they answered the call placed by the predictive dialer.

Exemptions to Prohibited Uses of Autodialers

In its proposal, the FCC lists several exemptions to prohibited uses of autodialers. However, in defining autodialers, the FCC refers to the TCPA's definition of autodialer in Section 227. This definition is unclear on whether it includes predictive dialers. A predictive dialing system will receive a predetermined list of customers' accounts (with telephone numbers) downloaded from a host computer. The predictive dialing system may be programmed to dial a select group, or the entire group, of telephone numbers at the direction of a system administrator. For example, for collections work BG&E might program the dialer to call only those customers with an outstanding balance over a certain amount. While predictive dialing systems can store and dial numbers, they do not produce telephone numbers using a random or sequential number generator. The predictive dialing system, in contrast to an autodialer, is sophisticated enough to prevent placing a customer on hold, hanging up on a customer, or otherwise creating a nuisance for customers.

BG&E does not believe that the TCPA intended to prohibit the use of predictive dialers in ways contemplated by a company like BG&E. The predictive dialer can only dial the numbers downloaded into it, which would only be existing or former customers. The overwhelming majority of calls made by BG&E would be to persons who have received utility service or purchased merchandise from it and who are, therefore, located within the central Maryland area (unlike an autodialer used by a national telemarketer who randomly cold calls thousands of numbers a day all over the nation). As a result, the privacy of persons called will not be violated in the manner contemplated by the drafters of the TCPA. Therefore, BG&E requests that the FCC clarify the definition of autodialer to exclude a predictive dialer.

BG&E intends to use its predictive dialer to deliver a prerecorded message for certain purposes and a live voice for other purposes. To a lay person, understanding the regulations to determine when use of the predictive dialer is permissible, which in turn depends on whether a prerecorded or live voice is used, each time there is a desire to communicate with customers will be unduly burdensome given that there are so many different reasons for communicating with customers. The regulations, as written, can be very confusing when you intend to use a predictive dialer in a variety of ways. Again, this is in contrast to a national telemarketer whose sole purpose for calling is to sell goods.

In regard to the FCC's proposed exemptions from prohibited uses of autodialers, BG&E fully supports the exemptions listed. However, BG&E believes that the final rules must specify that the exemptions apply only to autodialers using prerecorded voices. This is the language contained in Section 227 of the TCPA. By not so specifying in the proposed rules the impression is created that to use an autodialer such use must fall within one of the exemptions. Most of BG&E's intended uses are either noncommercial in nature or, especially in regard to debt collection, are commercial calls that do not transmit an advertisement. Without the proposed exemptions, BG&E's ability to effectively communicate with its customers in the areas mentioned would be substantially impaired, as would the quality of service on which we pride ourselves.

However, in regard to the proposed exemption for former or existing clientele, BG&E is in a unique position vis-a-vis our customers. Since we provide gas and electric service to almost every household and business in our service territory, we have a business relationship with each of them. Therefore, should we seek to use our predictive dialer to call individuals to solicit sales from our merchandise stores, we believe such calls should be exempt under the preexisting business relationship and that the FCC should so clarify the final regulations. In other words, a preexisting business relationship should be defined as including any contact a person has with a company even though it may be with different divisions or lines of business operated by the same company. BG&E also believes that the preexisting business relationship definition should specify that both current and prior customers with whom a business has had contact within a specified number of years (for example, within the last five years) are included in the definition. By providing a time limit on determining whether a business has a "business relationship" with a prior customer, it would allow a reasonable time within which to allow solicitation of prior customers, but at the same time provides a cut off to preserve the customer's privacy rights.

Autodial Solicitations to Businesses

We agree with the FCC that the privacy concerns of businesses are adequately addressed by the TCPA itself and do not need further refinement.

Telephone Solicitation to Residential Subscribers

In regard to the proposed alternatives enumerated to balance the privacy of residential customers with the legitimate communication needs of businesses, BG&E supports the definition of an established business relationship as discussed above. As a result, BG&E would be deemed to have an established business relationship with everyone who recently received or is currently

receiving gas and electric service, allowing it to contact those persons to solicit merchandise sales. In addition, BG&E would be able to solicit sales from persons who, within a past number of years, have purchased merchandise from it.

In regard to the specific alternatives proposed by the FCC, a distinction must be made, when looking at alternatives, between national telemarketers and companies like BG&E that have a specific customer base within a small geographic area. Requiring companies like BG&E to buy into a national database or to use a special telephone prefix would be unduly burdensome, costly, and wasteful since all of our customers are located within a small geographic area. Therefore, it would seem that the FCC would be best served by selecting an alternative that would meet the TCPA's privacy goals and be relevant to all types of businesses. The two alternatives that meet these criteria are the ones requiring businesses to keep their own "do not call" list or restricting the time when calls can be made to residences. In addition, BG&E believes that its ability to solicit customers for merchandise sales is best balanced with the customer's privacy right by imposing either time of day restrictions similar to those contained in the Fair Debt Collection Act, or by requiring it to compile a specific "do not call" list of its customers that notify it of their desire not to receive merchandise solicitations.

For the reasons set forth above, BG&E hereby requests that the FCC clarify the final rules adopted under the TCPA to specifically exempt the use of predictive dialers, whether or not they are delivering recorded messages or using live operators. Alternatively, BG&E requests the FCC to clarify the definition of preexisting business relationship in the manner and for the reasons set forth above. Finally, we request that the FCC recognize the distinction between national telemarketers and companies like BG&E when choosing a method of preserving a consumer's privacy from unwanted solicitation of goods, and that as a result it choose either requiring the business to keep its own list of customers who do not want calls or restricting calling to certain times of the day.

If there is a need for further information or there are any questions in regard to BG&E's comments, please feel free to call me at (410) 234-5685.

Very truly yours,

A handwritten signature in cursive script, reading "David A. Brune". The signature is written in dark ink and is positioned below the typed name "David A. Brune".